

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THIRTEEN**

BEELMAN TRUCK CO.

Employer
and

Case 13-RC-21817

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO**

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held before a hearing officer of the National Labor Relations Board to determine the voting eligibility of one employee and whether there is an appropriate unit in which to conduct an election.¹

I. ISSUE

The Petitioner seeks a unit of two employees, a loader/dozer operator and a scale attendant, employed by the Employer at a dock located at 104th Street in Chicago, Illinois. The Employer contends that the petition should be dismissed because the scale attendant is a temporary seasonal employee who does not share a community of interest with the loader/dozer operator, and, therefore, the unit sought by the Petitioner is a single employee unit which the Board is precluded from certifying. The Petitioner contends that the scale attendant is an eligible voter as a regular seasonal employee with a reasonable expectancy of recall, and therefore, the unit consists of two employees which the Board may certify.

II. DECISION

For the reasons discussed in detail below, I find that the scale attendant does not have a reasonable expectancy of recall and is therefore not included in a unit and not an eligible voter.

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

III. STATEMENT OF FACTS

The Employer is engaged in the interstate transportation of bulk dry goods and commodities, including salt. It is headquartered in East St. Louis, Illinois and has five terminals, including one in Hammond, Indiana. The Hammond terminal operates a dock facility at 3020 East 104th Street, Slip 20 (herein the 104th Street dock) which is the only facility involved herein. Rick Carlson is the Hammond terminal manager, and he also manages the 104th Street dock. At that dock the Employer receives bulk salt shipments from one customer, Cargill Salt from spring through fall. The salt is unloaded from ships onto the dock by a conveyor belt. The loader/dozer operator moves the salt from the dock and shapes it into piles using a Caterpillar dozer. Once the salt is in proper piles it is covered by a tarp and stored for delivery in the winter to Cargill's customers. In the winter the loader/dozer operator uses a pay loader to load the salt on trucks for delivery to Cargill's customers. Between October and February-March, the Employer utilizes a scale attendant as needed. The scale attendant weighs the empty trucks as they come into the dock and then weighs the trucks after they have been loaded. The scale attendant makes sure the weights are correct, enters the information into a computer, prints and signs a scale ticket, and gives a copy of the scale ticket to the driver. In non-busy times when the Employer does not utilize a scale attendant, the loader/dozer will do the scale functions in addition to dozing and loading functions.

The loader/dozer operator position is a full time position covered by Department of Transportation regulations and exempt from overtime pay requirements. The current loader/dozer operator, Randall Jones, Jr., was hired on a part-time basis on June 20, 2005. He became a full-time, year-around employee on December 27, 2005. The loader/dozer is paid \$21.75 an hour and is entitled to holiday pay, vacation pay, health insurance, and disability insurance. The scale attendant is paid \$15 an hour and is not entitled to any of the fringe benefits that the loader/dozer receives.

The scale attendant works in the winter when the Employer is loading salt on trucks for delivery to Cargill's customers. The scale attendant's hours of work are dictated by the number of customer orders that need to be loaded on a given day, and if there are very few orders the scale attendant is given the day off. The record shows that the Employer has experienced some difficulty retaining scale attendants because of the fluctuating hours and seasonal nature of the work. From October 2001 to the present time, with one exception, the Employer has not utilized the same employee in the scale attendant position more than once. The exception was Eric Carlson, the son of terminal manager Rick Carlson. He worked as a scale attendant in the winter of 2001, in the winter of 2002, and again beginning in December 2007. In 2004 and part of the 2005 winter season, the Employer used temporary employment agencies to fill the scale attendant position in the hope that this could resolve the problem in filling that position. However, this proved to be an unsatisfactory solution, and the Employer reverted to hiring its own scale attendants.

The present scale attendant, Randall E. Jones, Sr., is the father of loader/dozer operator Randall Jones, Jr. He was hired on October 17, 2008. Prior to being hired, Randall E. Jones, Sr. was retired. He drives to work with his son, and they take their breaks together. Payroll records from October 18, 2008 through December 17, 2008 show he worked a low of eight hours per

week to a high of 56 hours per week, and he averaged 36.5 hours per week during this period. Payroll records for the previous winter season show that the Employer used three different scale attendants in consecutive order. Cara Moynihan averaged 20.9 hours per week in the payroll periods of October 20, 2007 thru November 30, 2007. Arturo Sanchez averaged 26.6 hours per week in the payroll periods of December 7, 2007 through January 11, 2008. Eric Carlson averaged 45.5 hours per week in the payroll periods of December 29, 2007 and February 29, 2008.

Terminal Manager Rick Carlson testified at the hearing that Randall E. Jones, Sr., being a retired person, is a good fit for the fluctuating hours of the scale attendant position. Carlson further testified that Randall E. Jones, Sr. is a good worker and, if he wanted to return to the Employer next season, he would consider bringing him back. Randall E. Jones, Sr. testified that he wanted to return to work for the Employer next winter.

IV. ANALYSIS

Based on the parties' positions and the record, the central issue in the instant case is whether the employees utilized by the Employer on a seasonal basis to fill the scale attendant position have a sufficient interest in the terms and conditions of employment to be included in a unit with the loader/dozer operation. This issue mostly turns on whether they have a continuing expectancy of employment beyond working in a single season.

Regular seasonal employees, who have a reasonable expectation of reemployment and share a sufficient community of interest with regular employees, are included in a bargaining unit with the regular employees. *P.G. Gray*, 128 NLRB 1026 (1960). Temporary seasonal employees are seasonal workers who do not have a reasonable expectation of reemployment. They are excluded from placement in a unit with regular employees. *L & B Cooling*, 267 NLRB 1 (1983). A reasonable expectation of reemployment may be established by an explicit agreement that seasonal employees will be rehired or on the basis of an employer's past practice regarding the hiring and retention of seasonal employees. In determining whether an employer's utilization of seasonal employees creates a reasonable expectation of reemployment the Board considers whether the employer gives preference in rehiring to former seasonal workers, draws seasonal workers from the same labor pool, whether the seasonal workers share the same general conditions of employment with regular employees, and whether seasonal workers can transition to permanent employment with the employer. *Maine Apple Growers*, 254 NLRB 501 (1981); *Aspen Skiing Corp.*, 143 NLRB 707 (1963); *Kelly Bros Nurseries*, 140 NLRB 82 (1962). Thus, the Board found seasonal employees must be excluded from an appropriate unit when the employer had no recall policy for seasonal employees, there was a high turnover rate among seasonal employees, seasonal employees did not share in the benefits granted to permanent employees, and seasonal employees rarely became permanent employees. *Freeman Loader Corp.*, 127 NLRB 514, 515 (1960).

In the instant case, all the factors considered by the Board in the *Freeman Loader* case for excluding the seasonal employees from the appropriate unit are present in the instant case. The record shows that the Employer does not have any policy for recalling seasonal employees for future employment, and there is considerable turnover during a season among the seasonal

employees working as scale attendants. Seasonal employees working as scale attendants do not have any of the benefits granted to permanent full-time employees, and no seasonal employee has become a permanent employee. Thus, the seasonal employees that occupy the position of scale attendant have no reasonable expectancy of reemployment and are not appropriately included in a unit of permanent employees.

The Petitioner contends that seasonal employees filling the scale attendant position have a reasonable expectancy of recall because the Employer's consistency of using seasonal employees during the winter months and drawing seasonal employees from the same labor market, citing *Foremost Dairies*, 124 NLRB 293, 296 (1959). However, the Board in that case also relied upon the fact that the seasonal employees after a probationary period received the same benefits that permanent employees received and there was a potential for seasonal employees to become permanent employees. These additional factors are not present in the instant case. Further, the record contains no evidence concerning the scope of the labor market from which the Employer hires seasonal employees. Without evidence of a narrower labor market, the entire metropolitan Chicago area is the potential labor market for the Employer, and this is too broad to give any particular seasonal employee an expectancy of being recalled. Furthermore, the Employer's history regarding the hiring of seasonal employees for the scale attendant position does not demonstrate any significant possibility that a seasonal employee will be rehired. The only seasonal employee that has been rehired is the son of the terminal manager.

The Petitioner further contends that the employees filling the scale attendant position have a reasonable expectancy of reemployment asserting that Terminal Manager Carlson testified that he would rehire a seasonal employee for the scale attendant position if they passed a drug screening and background check. The testimony in question concerned whether the Employer would rehire Randall E. Jones, Sr. for the next season. While Carlson conceded that Jones, Sr. was a good fit for the scale attendant position, the Employer would "consider" bringing him back. I find that this does not establish that occupants of the scale attendant position have a reasonable expectancy of recall. First, the statement of Carlson about the possibility of rehiring Jones, Sr. is non-committal. Second, the issue herein is whether the position of scale attendant should be included in the unit as it historically has been a temporary seasonal employee position, not whether a particular occupant of that position has a recall expectancy.

V. CONCLUSION

Based on the foregoing, I find that the occupants of the scale attendant position are temporary seasonal employees who may not be included in a unit of permanent employees and are therefore are not eligible voters in a Board conducted election. *Post Houses*, 161 NLRB 1159, 1172-1173 (1966). Further, as the unit sought by the Petitioner consists of one employee which the Board will not certify as an appropriate bargaining unit, the petition is dismissed. *Roman Catholic Orphan Asylum*, 229 NLRB 251 (1977).

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by January 28, 2009.

DATED at Chicago, Illinois this 14th day of January, 2009.

/s/ Joseph A. Barker
Joseph A. Barker, Regional Director
National Labor Relations Board
Region Thirteen
200 West Adams Street, Suite 800
Chicago, Illinois 60606

CATS – Voter Eligibility – Seasonal
Classifications - 362-6724; 362-6730; 401-2525